IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1355 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION & ANR. - Appellant(s)

Versus

UNITED INSURANCE CO. LTD. & ANR. - Respondent(s)

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Appearance :
Ms. Maya Desai for Appellant(s) : 1 - 2.
Shri Adil Mirza for Respondent(s) : 1.
None for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/08/2007

ORAL JUDGMENT

The appellant-Gujarat State Road Transport Corporation,

being aggrieved by the award dated 4th November, 1987 passed by the learned Motor Accident Claims Tribunal (Main), Vadodara in M. A. C. Application No.224 of 1983, is before this Court with a submission that the learned Tribunal below was unjustified in making the award in favour of the respondent-claimant.

2. According to the learned Counsel for the appellants, the learned Tribunal below was unjustified in fixing 100% liability on the head of the State Transport Corporation. According to her, the facts scenario would clearly show that the driver of the truck and driver of the bus were negligent to some extent and under the circumstances, the learned Tribunal below should have held each of them liable. It was also submitted that in the present case, the Insurance Company, which had insured the truck, could not join the claimant as the claimant had already received the money and had subrogated his rights in favour of the Insurance Company.

3. Shri Adil Mirza, learned Counsel for the respondent-Insurance Company, on the other hand, submitted that present is a case where the learned Tribunal below relying upon *panchnama* of the spot and photographs produced before it, has come to the conclusion that the driver of S.T. bus was guilty to the extent of 100%. He also submitted that the claimant/owner of the truck even if receives money from his

Insurance Company, he would still be entitled to recover the money from the Insurance Company or the owner of the vehicle, which was driven rashly and negligently.

4. So far as the question of negligence on the part of driver is concerned, from the evidence available on record, it would clearly appear that the truck was going on its left side, the bus was driven rashly and negligently, the bus had crossed center of the road and thereafter, it gave a dash to the truck. The photographs available on the record would show that the bus, after entering into the lane reserved for the oncoming vehicle, gave a dash on the front of the truck. If the bus driver could not control his vehicle and gave a dash to the truck, then, he would be held 100% responsible. The learned Tribunal below was not unjustified in holding the driver of the bus guilty of rash and negligent driving.

5. So far as the question of subrogation is concerned, the liability of the driver and owner of the offending truck would be absolutely against the owner of the truck. If the owner of the truck could receive some money from his Insurance Company, then too, he would be entitled to recover money from the owner of the offending bus and after recovering the same under the law, he would be liable to refund the money to his own Insurance Company. In the present case, the Insurance Company, which had insured the truck had joined the

claim petition as claimant No.1, therefore, present is a case where under the authority of subrogation, the Insurance Company is claiming money from the wrongdoer. The learned Tribunal below was not unjustified in holding in favour of the owner of the truck and the Insurance Company of the truck.

6. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**